

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROMAN (RON) TUMIAK,

Plaintiff,

v.

NANCY A. BERRYHILL,

Defendant.

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Civil No. 18-1559

Judge Marilyn J. Horan/

Magistrate Judge Maureen P. Kelly

OPINION and ORDER

This case has been referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(A) and (B), and Rule 72 of the Local Rules for Magistrate Judges.

On July 23, 2019, the Magistrate Judge issued a Report and Recommendation, ECF No. 17, recommending that Defendant's Motion to Dismiss, ECF No. 3, be granted; Plaintiff's Motion for Interpleader and to File a Supplemental Complaint, ECF No. 9, be denied; Plaintiff's Motion to Stay and Hold in abeyance Defendant's Dispositive Motions on the Pleadings by Remand Under Sentence Six of § 205(g) Pending Proceedings Under § 1335, ECF No. 11, be denied; and that Plaintiff's Complaint be dismissed with prejudice. The parties were informed that written objections to the Report and Recommendation were due by August 12, 2019.

Plaintiff timely filed "Specific Objections to Magistrate Judge's Report and Recommendation." ECF No. 19. In support of his Objections, Plaintiff filed a "Statement of Facts in Opposition to Certain Statements, Findings and Conclusions Contained in Magistrate's Report and Recommendation," along with numerous exhibits. ECF No. 20. For the reasons that

follow, after *de novo* review, the Court finds that Plaintiff's Objections do not undermine the recommendation of the Magistrate Judge.

The Court has reviewed Plaintiff's objections and concludes that the recommendation to grant the Motion to Dismiss and to dismiss Plaintiff's Complaint with prejudice is sound. None of Plaintiff's arguments and supporting exhibits presented in his Objections and Statement of Facts are sufficient to overcome the conclusion that Plaintiff has failed to allege facts to establish that this Court has jurisdiction over Plaintiff's claims asserted in Counts I, II, III, and V; or that Plaintiff is able to properly state a claim in Count IV. Accordingly, Defendant's Motion to Dismiss will be granted and the Report and Recommendation will be adopted as the opinion of the Court, as supplemented herein.

In addition to filing Objections, Plaintiff filed three motions that are not only intertwined with his Objections, but also attempt, in part, to advance his Complaint by challenging the Report and Recommendation by other means. First, Plaintiff filed a "Motion to Disqualify Defendant's Counsel of Record for Conflict of Interest, Self-Interest, The Advocate Witness Rule and Imputed Structural Ethical Breaches." ECF No. 21. In his Objections, Plaintiff objects on the ground that Defendant's counsel should be disqualified for a conflict and of interest, specifically referring the Court to his concurrently filed Motion to Disqualify Counsel. Pltf. Obj. at 6. Next, Plaintiff filed a "Motion to Vacate Reciprocal Orders of Minnesota and Pennsylvania State Supreme Courts When Acting as Trial Courts," requesting this Court to vacate decades-old state Supreme Court orders disbaring Plaintiff from the practice of law. ECF No. 24. Count I and Count II of Plaintiff's Complaint purport to state claims challenging his disbarment. In his Objections, Plaintiff argues that because it would be futile for Plaintiff to

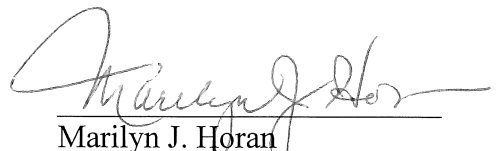
challenge his disbarment in either state court, the Magistrate Judge erred in not exercising the Court's equity jurisdiction. Pltf. Obj. at 7. Plaintiff states that the equitable remedy he seeks is also requested in his separately filed Motion to Vacate Orders of Minnesota and Pennsylvania State Supreme Courts. Id. Finally, Plaintiff filed a "Motion For De Novo Determination of Matters Referred to Magistrate Judge and to Remand with Instructions." ECF No. 26. Plaintiff explicitly bases his motion seeking de novo review on the Court first granting his "concurrent motion to disqualify Defendant's Counsel." Pltf. Br. Supp., ECF No. 27, at 1. The Court has determined that the Report and Recommendation is sound, and that Plaintiff's Objections do not undermine the Report or the Recommendation. Accordingly, because Plaintiff's three separately filed Motions are intertwined with his Objections, and do not on their own merit consideration in light of the Court's ruling on the Motion to Dismiss, Plaintiff's Motions will be dismissed as moot.

The Magistrate Judge thoroughly reviewed the record evidence submitted by Plaintiff as well as the underlying Social Security record. For the reasons stated above, and after *de novo* review of the pleadings and documents in the case, including the Motion to Dismiss and brief in support, and the brief in opposition, together with the Report and Recommendation, Plaintiff's Objections thereto, Plaintiff's Statement of Facts and exhibits, the Court finds that Plaintiff's Objections do not undermine the recommendation of the Magistrate Judge. Therefore, the Motion to Dismiss filed by Defendant will be granted and the Report and Recommendation is adopted as the Opinion of the Court, as supplemented. The Court concurs with the Magistrate Judge's conclusion that allowing Plaintiff to amend the complaint would be futile.

Accordingly, the following Order is hereby entered.

AND NOW, this 27th day of August, 2019, it is hereby ORDERED as follows:

1. The Magistrate Judge's Report and Recommendation, ECF No. 17, dated July 23, 2019, is adopted as the Opinion of the Court, as supplemented herein.
2. Defendant's Motion to Dismiss, ECF No. 3, is GRANTED and Plaintiff's Complaint is DISMISSED with prejudice;
3. Plaintiff's Motion for Interpleader and to File a Supplemental Complaint, ECF No. 9, is DENIED;
4. Plaintiff's Motion to Stay and Hold in abeyance Defendant's Dispositive Motions on the Pleadings by Remand Under Sentence Six of § 205(g) Pending Proceedings Under § 1335, ECF No. 11, is DENIED;
5. Plaintiff's Motions, filed at ECF Nos. 21, 24, and 26, are dismissed as moot;
6. Plaintiff's Complaint is DISMISSED with prejudice and the Clerk of Court shall mark this case CLOSED.


Marilyn J. Horan
United States District Court Judge

cc: Roman, (Ron) Tymiak, pro se
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All counsel of record
(via ECF electronic notification)